

U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
ENTERED  
TAMARA L. HANNAH CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

Debtors.

## **ENFORCE PLAN OF REORGANIZATION AND CONFIRMATION ORDER**

findings and conclusions made at the hearing held December 5, 2003:

## **FINDINGS OF FACT**

as Agent ("Fleet").

and pending on the Court's docket.

<sup>1</sup> Where appropriate, findings of fact shall also be considered conclusions of law, and conclusions of law shall also be considered findings of fact. The Court reserves the right to make further findings of fact and conclusions of law.

C. On November 5, 2003, Cafeteria Operators, L.P. (the "Reorganized Debtor") and Fleet (Fleet and the Reorganized Debtor are collectively referred to herein as the "Movants") filed their Motion to Enforce Plan of Reorganization and Confirmation Order (the "Motion"). The Motion related to that certain Lease Assignment and Assumption Agreement (the "Bolour Agreement") by and between the Reorganized Debtor, on the one part, and Michel Bolour ("Bolour"), on the other part, which appears to have been entered into on or about September 30, 2003.<sup>2</sup> The Bolour Agreement involved a certain sublease for property (the "Master Lease") located at 13055 Sherman Way, North Hollywood, California (the "Property").

D. Paragraph 8 of the Bolour Agreement expressly provides:

**BANKRUPTCY COURT APPROVAL.** This Agreement is subject to the entry of an order by the United States Bankruptcy Court for the Northern District of Texas, (the "Bankruptcy Court") and is subject to higher and/or better offers, approving the assumption and assignment of the Lease to the [Bolour].

E. Paragraph 12 of the Bolour Agreement expressly provides:

**GOVERNING LAW.** This Agreement shall be construed under and in the accordance with the laws of the State of Texas and all obligations of the parties created hereunder are to be performed, and exclusive venue shall lie in the Bankruptcy Court for the Northern District of Texas.

F. Because of a dispute surrounding the assignment of the Master Lease, the Movants filed the Motion in good faith. As announced by the Movants at the hearing on this matter, and as shown by the uncontroverted evidence introduced on the record, subsequent to entering into the Bolour Agreement the Reorganized Debtor received a higher and better offer regarding the Master Lease from Samuel Shahinian ("Shahinian").

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<sup>2</sup> At the hearing, the Movants orally withdrew the portion of the Motion seeking relief against Shahinian.

~~G. The assignment of the Master Lease is necessary to ensure that distributions to holders of allowed claims are accomplished as provided in the Plan and Confirmation Documents.~~ H0H

### CONCLUSIONS OF LAW

1 This Court has jurisdiction over this Motion pursuant to 11 U.S.C. § 1142 and numerous Plan provisions, including, but not limited to Paragraphs ¶19.1.3, 19.1.6, 19.1.9, and 19.1.10 of the Plan.

2 Pursuant to standards adopted by the Fifth Circuit, this Court has continuing jurisdiction to implement the Plan and the Confirmation Documents, and to consider and rule on the relief requested in the Motion. See In re U.S. Brass Corp., 301 F.3d 296 (5th Cir. 2002).

3 All objections to the alternative relief sought in the Motion not withdrawn or otherwise resolved are expressly overruled.

4 Any and all injunctions found in the Plan, the Bankruptcy Code or otherwise ordered by this Court remain in full force and effect as they relate to the Reorganized Debtor's disposition of the Master Lease and the distribution of proceeds related thereto.

5 Pursuant to the plain language of the Bolour Agreement, the Reorganized Debtor's obligation to perform under the Bolour Agreement shall only arise only upon formal approval of the Bolour Agreement by this Court and only in the event the Reorganized Debtor does not receive a higher and better offer.

6 As shown by the undisputed evidence presented on the record at the hearing, the Reorganized Debtor received a higher and better offer subsequent to execution of the Bolour Agreement. Accordingly, the conditions precedent found in the Bolour Agreement necessary to trigger the Reorganized Debtor's obligations thereunder were not met and the Bolour Agreement is unenforceable against the Reorganized Debtor.

7 The Reorganized Debtor is under no obligation to proceed under the Bolour Agreement or to seek further Court approval of the Bolour Agreement.

8 Based on the evidence presented on the record at the hearing, the offer submitted to the Reorganized Debtor by Shahinian is (a) the higher and better offer received by the Debtors or the Reorganized Debtor ~~and (b) constitutes reasonably equivalent value and fair consideration~~ <sup>^</sup> ~~under applicable federal and state law.~~ H0H

9 Based on the evidence presented on the record at the hearing, the decision to accept the higher and better offer made by Shahinian was made in the Reorganized Debtor's sound business judgment and is necessary to implement the Plan pursuant to the Confirmation Documents.

10 The Reorganized Debtor and any other person having duties or responsibilities under the Plan or the Confirmation Documents, and their respective directors, officers, general partners, agents, trustees, representatives, and attorneys are specifically authorized, empowered, and directed to take any and all actions necessary or appropriate to implement, effectuate, and consummate the agreement with Shahinian, as announced on the record at the hearing, and the

transactions contemplated thereby, all in accordance with the terms of the Plan and the Confirmation Documents.

WMA 11 This Court retains jurisdiction over the Bolour Agreement and any <sup>disputes arising</sup> ~~subsequent~~ under the Bolour Agreement.  
~~assignment and/or non-assignment of the Master Lease pursuant thereto.~~

SIGNED: 12-22-03

Harlin D. Hale

Harlin D. Hale  
United States Bankruptcy Judge